UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

DISCOVERORG, LLC,	)	
	)	
Plaintiff,	)	Case No.
	)	
v.	)	COMPLAINT
	)	
ZAP TECHNOLOGIES, INC.,	)	JURY DEMAND
	)	
Defendant.	)	
	)	

Plaintiff DiscoverOrg, LLC ("DiscoverOrg"), for its complaint against Zap Technologies, Inc. ("ZAP") alleges as follows:

PARTIES

1.   DiscoverOrg is a Delaware limited liability corporation with its principal place of business in Vancouver, Washington.

2.   ZAP is a Florida corporation with a principal place of business in the State of Georgia and does business in the State of Washington.

JURISDICTION AND VENUE

3.   This court has jurisdiction over the subject matter of the claims herein pursuant to 18 U.S.C. §§ 1331 and 1338(a) and (b) because DiscoverOrg's claim arises under Federal Law.

4.   This court also has jurisdiction over DiscoverOrg's state law claims pursuant to 28 U.S.C. § 1367 under principles of supplemental jurisdiction.

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5.   This court has personal jurisdiction over ZAP, and venue is properly laid in this district court pursuant to 28 U.S.C. § 1391 and 28 U.S.C. §1400(a), in that ZAP transacts business in this state and has committed tortious acts within this state.

FACTS AND ALLEGATIONS

A.   DiscoverOrg's Database

6.   DiscoverOrg is a provider of business-to-business ("b2b") marketing data for the information technology ("IT") industry. DiscoverOrg uses technology, computers, and electronic communication systems to provide subscribers with profiles, contacts, and other information relating to the IT, finance, and marketing infrastructure of Fortune 5000 and mid-market companies around the United States. DiscoverOrg's database contains profiles and organizational charts of more than 36,000 companies and contains more than 600,000 business contacts. DiscoverOrg has been recognized in the industry as the most complete and accurate b2b marketing database. The depth, breadth, and accuracy of DiscoverOrg's data are unrivaled in the marketplace.

7.   DiscoverOrg has made substantial investments in infrastructure and resources to support its database and ensure that it is of the highest quality. DiscoverOrg's highly-trained research analysts focus exclusively on building, managing, and updating DiscoverOrg's database, resulting in timely and comprehensive data being made available to DiscoverOrg's clients. DiscoverOrg has expended substantial labor, time, resources, effort, and money to select, gather, collect, organize, generate, arrange, and disseminate the timely and continuously updated information DiscoverOrg provides in its database. For example, DiscoverOrg employs approximately 150 employees and has made significant investment in developing and purchasing software, hardware and other equipment to continuously update and support the accuracy and comprehensiveness of its database. DiscoverOrg's database exhibits DiscoverOrg's decisions and input as to the selection, arrangement, orchestration, compilation, and presentation of the organizational charts, contacts, and other information collected and assembled by DiscoverOrg's analysts.

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1   8.   DiscoverOrg's database is of unparalleled value to companies like ZAP, who

2   seek detailed information to assist in their efforts to market their IT-related products and

3   services. DiscoverOrg has licensed subscription access to its database to over 1400 companies,

4   each of whom pays a significant license fee for the right to access and use DiscoverOrg's

5   database.

6   9.   The value of DiscoverOrg's database is directly related to and dependent upon

7   its proprietary and non-public nature. Accordingly, DiscoverOrg takes substantial steps to

8   protect the security of the information contained in its database. For example, DiscoverOrg

9   limits access to its database to only authorized users pursuant to a restrictive license agreement,

10   which limits the number of users who have access to DiscoverOrg's database and requires that

11   all information be destroyed after the terms of the license agreement expire. DiscoverOrg

12   password protects access to its database, and utilizes mail monitoring and list protection at

13   substantial costs to further secure and ensure the integrity of DiscoverOrg's database.

14   **B.   ZAP's Wrongful Conduct**

15   10.   All actions alleged to have been done by ZAP were, upon information and belief,

16   performed by employees or other agents of ZAP within the scope of their employment or other

17   agency relationship with ZAP, on ZAP's behalf, and for ZAP's benefit.

18   11.   ZAP used identification information and passwords that did not belong to it, and

19   that it was not authorized to use, in order to access DiscoverOrg's database. From August 3,

20   2015 through September 15, 2015, ZAP gained unauthorized access to DiscoverOrg's database

21   using usernames and passwords issued to DiscoverOrg clients pursuant to such clients' valid

22   licenses.

23   12.   On these occasions, ZAP accessed and downloaded DiscoverOrg's proprietary

24   information without permission from DiscoverOrg. ZAP used their unauthorized access to

25   perform searches within the database using DiscoverOrg's technology and to view and

26   download more than 39,000 records.

27   13.   ZAP acted knowingly, intentionally, and willfully in accessing DiscoverOrg's

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computer and electronic communication system without authorization and in viewing and downloading DiscoverOrg's proprietary, copyrighted information. ZAP circumvented DiscoverOrg's security system and unlawfully accessed DiscoverOrg's database to gain the commercial benefit thereof without compensating DiscoverOrg. ZAP's unauthorized use of DiscoverOrg's proprietary information has furthered ZAP's financial interest by facilitating identifying and contacting potential new customers and business opportunities, among other uses, and ZAP has wrongfully profited therefrom.

14.   At all relevant times, ZAP had a duty to train and supervise the conduct of its employees and agents acting on its behalf. ZAP was negligent in failing to appropriately train and monitor its employees and agents and failing to have appropriate policies in place regarding unauthorized access to computer systems, communication, storage networks, and copyrighted works and/or failing to enforce such policies.

FIRST CLAIM FOR RELIEF

(Copyright Infringement)

15.   DiscoverOrg incorporates herein by reference the allegations in paragraphs 1-14.

16.   DiscoverOrg's database is an original work of authorship containing copyrightable subject matter for which copyright protection exists under the Copyright Act. DiscoverOrg has filed for copyright registration with the United States Copyright Office in compliance with 17 U.S.C. § 101 *et seq*. DiscoverOrg's copyright was registered December 27, 2010 with registration number TX0007487999.

17.   As owner of all right, title, and interest in and to the copyrighted works, DiscoverOrg is entitled to all the exclusive rights and remedies accorded by Section 106 of the Copyright Act to a copyright owner, including the exclusive rights to reproduce the copyrighted works and to sell non-exclusive licenses to those copyrighted works.

18.   ZAP has gained access to and made and used copies of DiscoverOrg's copyrighted material without authorization or license from DiscoverOrg. ZAP used those

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copies without compensating DiscoverOrg for ZAP's financial gain without compensating DiscoverOrg. In doing so, ZAP has violated DiscoverOrg's exclusive rights of reproduction and distribution.

19.   At all relevant times, ZAP had the right and the ability to supervise and monitor the actions its employees and agents, whose actions were performed on its behalf and for its direct financial benefit and were within the scope of their employment for ZAP.

20.   With knowledge of the infringing activity, ZAP induced, caused, facilitated, encouraged, and/or or materially contributed to the infringing conduct.

21.   ZAP's acts of infringement have been willful and intentional, in disregard of and with indifference to the rights of DiscoverOrg.

22.   As a direct and proximate results of the foregoing acts, DiscoverOrg has been and will continue to be harmed. DiscoverOrg is entitled to its actual damages, including any and all profits due to ZAP's wrongful conduct, or statutory damages. DiscoverOrg is also entitled to its costs, including reasonable attorney fees.

SECOND CLAIM FOR RELIEF

(Violation of the Computer Fraud and Abuse Act)

23.   DiscoverOrg incorporates herein by reference the allegations in paragraphs 1-14.

24.   DiscoverOrg's computer system and database comprise "protected computers" within the meaning of 18 U.S.C. § 1030(e)(2).

25.   ZAP, knowingly and with intent to defraud DiscoverOrg, accessed DiscoverOrg's protected computers without authorization and thereby obtained valuable information from such protected computers using interstate communication.

26.   ZAP's actions constitute violations of 18 U.S.C. §§ 1030(a)(2)(C) and 1030(a)(4).

27.   ZAP's unauthorized access of DiscoverOrg's computer has caused loss to DiscoverOrg during a one-year period of more than $5,000 in value.

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1   28.   By reason of the foregoing, DiscoverOrg is entitled to compensatory damages

2   in an amount to be determined at trial pursuant to 18 U.S.C. § 1030(g).

3   **THIRD CLAIM FOR RELIEF**

4   (Violation of the Stored Communications Act)

5   29.   DiscoverOrg incorporates herein by reference the allegations in paragraphs 1-

6   14.

7   30.   DiscoverOrg's network of computer servers and related equipment constitutes a

8   "facility" providing "electronic communications services" as those terms are defined in 18

9   U.S.C. § 2510(15). DiscoverOrg's database constitutes an "electronic storage" device as that

10   term is defined in 18 U.S.C. § 2510(17).

11   31.   ZAP willfully and intentionally accessed DiscoverOrg's password- protected

12   computer service and database without authorization and obtained wire and electronic

13   communications between DiscoverOrg and its clients stored therein.

14   32.   ZAP's actions constitute willful and intentional violations of 18 § U.S.C. § 2701.

15   By reason of the foregoing, DiscoverOrg is entitled to recover compensatory damages,

16   statutory, and punitive damages, ZAP's profits, and DiscoverOrg's attorney fees and costs

17   against ZAP pursuant to 18 U.S.C. § 2707.

18   **FOURTH CLAIM FOR RELIEF**

19   (Misappropriation of Trade Secrets)

20   33.   DiscoverOrg incorporates herein by reference the allegations in paragraphs 1 -

21   14.

22   34.   DiscoverOrg gathers, organizes, generates, collects, and assembles in-depth,

23   commercially-valuable information (including reporting structures, contact information, and

24   other data) expending substantial time, labor, and expense.

25   35.   The compilation of information in DiscoverOrg's database is the exclusive

26   knowledge of DiscoverOrg and is not known, and cannot be accessed, by anyone except

27   customers who have agreed to maintain the confidentiality of such information through a

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restrictive license, which forbids them from sharing or disseminating the information and requires that they return and/or destroy the information when their license expires. The commercial value of DiscoverOrg's database is directly correlated to and dependent upon its proprietary and non-public nature.

36.   DiscoverOrg protects the information in its database by limiting access to those customers who agree to the terms of the access in the licensing agreement. DiscoverOrg monitors access to the database and use of the information to further ensure its security.

37.   ZAP willfully and maliciously misappropriated DiscoverOrg's trade secrets by accessing DiscoverOrg's computer systems without authorization, copying the information contained therein, and using that information for ZAP's financial gain.

38.   ZAP's actions have caused damage to DiscoverOrg in the form of lost profits and diminution of the market value of its database. By reason of the foregoing, ZAP is liable to DiscoverOrg for reasonably royalties, compensatory damages, wrongfully derived revenues, and exemplary damages, in an amount to be proven at trial, plus DiscoverOrg's costs including reasonable attorney fees.

FIFTH CLAIM FOR RELIEF

(Misappropriation)

39.   DiscoverOrg incorporates herein by reference the allegations in paragraphs 1 - 14.

40.   DiscoverOrg gathers, organizes, generates, collects, and assembles in-depth, commercially-valuable information (including reporting structures, contact information, and other data) expending substantial time, labor, and expense.

41.   ZAP intentionally and without permission, accessed, and copied information from the database, used the stolen information for their own financial gain, and profited therefrom. ZAP has taken a "free-ride" on DiscoverOrg's skill, labor, and, costly and substantial efforts in creating its commercially-valuable database.

42.   ZAP's actions have damaged DiscoverOrg in the form of lost profits and

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diminution of the market value of its database. By reason of the foregoing, misappropriation of DiscoverOrg's data, ZAP is liable to DiscoverOrg for compensatory damages including wrongfully derived revenues in an amount to be proven at trial.

SIXTH CLAIM FOR RELIEF

(Trespass to Chattels)

43.   DiscoverOrg incorporates herein by reference the allegations in paragraphs 1 - 14.

44.   DiscoverOrg owns a computer system that houses its proprietary electronic database. DiscoverOrg grants password access to this system only to its clients.

45.   ZAP intentionally accessed DiscoverOrg's computer system without authorization and thereby interfered with DiscoverOrg's possessory interest in its computer systems.

46.   As a result of ZAP's trespass to DiscoverOrg's computer system, ZAP caused damage to DiscoverOrg's database including, but not limited to, the diminution in the market value of DiscoverOrg's computerized data and information stored on such computer system. By reason of the foregoing, ZAP is liable to DiscoverOrg for compensatory damages in an amount to be proven at trial.

SEVENTH CLAIM FOR RELIEF

(Unjust Enrichment)

47.   DiscoverOrg incorporates herein by reference the allegations in paragraphs 1 - 14.

48.   Through ZAP's wrongful actions described herein, ZAP has been unjustly enriched through the use of DiscoverOrg's commercial-valuable data without compensation to DiscoverOrg.

49.   ZAP is therefore liable to DiscoverOrg to the extent of such unjust enrichment in an amount to be determined at trial.

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EIGHTH CLAIM FOR RELIEF

(Negligence)

50.   DiscoverOrg incorporates herein by reference the allegations in paragraphs 1 - 14.

51.   At all relevant times, ZAP was under a duty to take reasonable care in training and supervising its employees and other agents acting on its behalf.

52.   It was foreseeable that the failure to train and supervise employees and other agents regarding appropriate methods for obtaining sales and marketing information for the benefit of ZAP would harm a third party such as DiscoverOrg.

53.   ZAP breached its duty when it failed to train and supervise its employees by allowing them in the unlawful conduct set forth in this complaint. In particular, ZAP failed to properly implement and enforce a policy prohibiting such conduct, as would be required of a reasonable person.

54.   As a direct and proximate result of ZAP's negligence, DiscoverOrg has suffered damage in the form of lost profits and diminution of the market value of its database. ZAP is liable to DiscoverOrg for compensatory damages in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, DiscoverOrg prays for the following relief:

1.   entry of judgment in its favor and against ZAP on all counts;

2.   as to its First Claim for Relief, actual or statutory damages plus costs including reasonable attorney fees;

3.   as to its Second Claim for Relief, compensatory damages;

4.   to its Third Claim for Relief, actual, statutory, and punitive damages plus costs, including reasonable attorney fees;

5.   as to its Fourth Claim for Relief, reasonable royalties, compensatory damages, wrongfully derived revenues, and exemplary damages plus costs, including reasonable attorney fees;

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1 6. as to its Fifth Claim for Relief, compensatory damages;

2 7. as to its Sixth Claim for Relief, compensatory damages;

3 8. as to its Seventh Claim for Relief, the amount by which ZAP has been unjustly

4 enriched;

5 9. as to its Eighth Claim for Relief, compensatory damages; and

6 10. such other relief as the Court may deem just and equitable.

7 DATED: November 12, 2015

8   Respectfully submitted,

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